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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/658,682	09/09/2003	David W. Plank	GMI0012/US	2267
33072	7590	01/12/2009		
KAGAN BINDER, PLLC SUITE 200, MAPLE ISLAND BUILDING 221 MAIN STREET NORTH STILLWATER, MN 55082			EXAMINER WONG, LESLIE A	
			ART UNIT 1794	PAPER NUMBER
			MAIL DATE 01/12/2009	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* DAVID W. PLANK,  
and DANIEL J. LEWANDOWSKI

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Application No. 10/658,682  
Technology Center 1794

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Mailed: January 12, 2009

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Before DELORES LOWE, *Review Team Paralegal*  
LOWE, *Review Team Paralegal*.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on November 21, 2008. A review of the application revealed that it is not ready for docketing as an appeal.

Accordingly, the application is herewith being returned to the Examiner to address the following matter requiring attention prior to docketing.

**EXAMINER'S ANSWER, MISSING CERTIFIED TRANSLATION**

The Examiner relied on the foreign reference Lee (JP 55-34042) in rejecting the claims. Full certified English translation of the above noted foreign reference is not of record in the Image File Wrapper (IFW).

When an Examiner relies on a document “in a language other than English, a translation *must* be obtained so that the record is clear as to the precise facts the examiner is relying upon in support of the rejection” (emphasis added). MPEP §1207.02. Pursuant to a memorandum dated April 29, 2002 by Stephen G. Kunin, Deputy Commissioner for Patent Examination Policy:

Effective immediately, no appeal should be forwarded to the Board of Patent Appeals and Interferences for decision where: (1) a rejection is supported in whole or part by an abstract without reference to the underlying document, . . . ; or (2) a rejection is supported in whole or part by a prior art document not in the English language, unless accompanied by a translation of the prior art document into English.

The memorandum also states “[i]f the document is in a language other than English and the examiner seeks to rely on that document, a translation *must* be obtained so that the record is clear as to the precise facts the examiner is relying upon in support of the rejection” (emphasis added).

Accordingly, it is **ORDERED** that the application is returned to the Examiner:

- 1) to obtain full certified English language translation of the above noted foreign reference;
- 2) to complete the IFW by having the translation obtained scanned into the IFW file;
- 3) to provide copies of the translations obtained to Appellants; and
- 4) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

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